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Supreme Court, U.S.
FILED

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No. _____

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

Christian Schneider
Petitioner

v.

Commissioner of Internal Revenue
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOUTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a taxpayer can be denied the Collection Due Process Hearing that Congress orders the IRS' Appeals Office to hold by the affirmative statutes IRC § 6320 / § 6330; the very hearing that the Tax Court had normally been imposing, is essential for compliance with the due process clause of the Fifth Amendment to the Constitution, and is the only means to ripen collection related issues for a just, speedy and inexpensive determination.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Christian K. Schneider

Petitioner

v.

Commissioner of Internal Revenue

Respondent

OPINIONS BELOW

The MANDATE of the United States Court of Appeals for the Fourth Circuit filed September 9, 2009 states: "The judgment of this Court, entered 6/2/09 takes effect today".

The ORDER of the United States Court of Appeals for the Fourth Circuit filed September 1, 2009 states: "The Court denies the petition for rehearing and rehearing en bank".

The JUDGMENT of the United States Court of Appeals for the Fourth Circuit filed June 2, 2009 states: "In accordance with the order of this Court, the judgment of the Tax Court is affirmed. Decided: June 2, 2009. Unpublished". The Case numbers are: Court of Appeals 08-2290, Tax Court 06-9348.

The ORDER AND DECISION of the United States Tax Court, Washington, D.C., docket No. 9348-06L, entered Sept. 10, 2008.

JURISDICTION

JUDGMENT ENTERED 6/2/09 took effect on September 9, 09.

The ORDER of the United States Court of Appeals for the Fourth Circuit filed September 1, 2009 states: "The Court denies the petition for rehearing and rehearing en bank".

The JUDGMENT of the United States Court of Appeals for the Fourth Circuit filed June 2, 2009

This Court has jurisdiction under 28 U.S.C. 1254

CONSTIUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Constitution provides for due process.

   The Fifth Amendment to the United States Constitution reads in relevant part: "No person shall be ... deprived of... property, without **due process of law...**"

2. Congress particularized due process by specifying that a fair Collection Due Process Hearing must be provided:

IRC § 6320 (b) is titled **"Right to fair hearing"**

IRC § 6320 (b)(1) "If a person requests a hearing under subsection (a)(3)(B), **such a hearing shall be held by the Internal Revenue Service Office of Appeals."**

3 Congress provided for taxpayer to raise issues at the hearing:

IRC § 6330 (c)(2)(A) "In general. **The person may raise at the hearing any relevant issue** relating to the unpaid tax or the proposed levy, including ···" (continued at 4, infra)

4 Congress provided sample issues:

IRC § 6330 (c)(2)(A)
(i) "appropriate spousal defenses;
(ii) challenges to the appropriateness of collection action; and
(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer in compromise."

STATEMENT OF THE CASE

A. OVERVIEW

This is a Collection Due Process Hearing case under the Fifth Amendment to the Constitution and IRC §6320 / §6330. Under this law, passed in 1998 as part of the IRS Reform and Restructuring Act, all collection activities are deferred until the taxpayer has a Collection Due Process Hearing.

The Fifth Amendment to the United States Constitution reads in relevant part: "No person shall be ... deprived of... property, without **due process of law...**"

Congress, in IRC § 6320 (b), particularized due process by specifying a **"Right to fair hearing"** and by specifying in *IRC § 6320 (b)(1)* that "... **such a hearing shall be held by the Internal Revenue Service Office of Appeals.**"

The Tax Court has generally been ordering the IRS to comply with those affirmative laws. An example is provided here:

> "As a preliminary matter, it appears to the Court that (IRS') Appeals Officer Keeley acted prematurely in labeling as frivolous and groundless the issues raised in petitioner's hearing request."
>
> "ORDERED that this case is remanded to respondent's Appeals Office for the purpose of affording petitioner a face-to-face administrative hearing pursuant to section 56330 (IRC § 6330) for the purpose of discussing any valid issue . . . that petitioner may present." *Thomas Wane Marett v. CIR, Order by Washington DC Tax Court Docket No. 4048-061, July 7, 2006, page 4, near top and near bottom of page.*

However, in appellant's case, in a **drastic departure from lawful and established procedure**, the IRS and the lower courts denied a statutory Collection Due Process Hearing:

> **"There is no dispute that petitioner requested and was denied a face-to-face hearing."** Schneider v. CIR *Order and Decision by the Washington DC Tax Court docket No 9348-06L, Sep. 10, 2008, page 2, near top.*

By affirming, the Tax Court's denial of a hearing, the Fed. Court of Appeals erred:

> " • • federal courts, have the duty to protect rights secured by the Constitution. *Jennison v. Goldsmith 940 F 2d 1308, 1311 top right (9th Cit. 1991)*

B. UNDER COLOR OF LAW SCHEMES

The denial of a statutorily mandated Due Process Hearing is not based on rational arguments, but rests on a series of errors:

a. IRS declares any issue frivolous
b. IRS offers substitute hearing.
c. IRS declares that it provided a hearing
d.. IRS denies hearing by ignoring issues
e. Tax Court ignores motion to remand
f. Tax Court resorts to summary judgment
g. Fed. Appeals Court concurs

a. IRS DECLARS ANY ISSUE FRIVOLOUS

To start, petitioner requests a hearing, listing only accepted issues to be resolved, namely:

> "I request collection alternatives including OIC (Offer In compromise) and payment schedule. Collection actions are inappropriate. Procedural defects by the Internal Revenue Service exist. I want to see copies of the 90-day letter, Notice and Demand Letter (Form17-A), also Summary

> Record of Assessment (Form23-C) and proof that they were sent. I contest the existence or the amount of the tax, because I did not receive a Notice of Deficiency. I also request proof of verification from the Secretary that all applicable law and administrative procedures have been met pursuant to IRC § 6330. I am also notifying the Service of my intention to make an audio recording of the hearing pursuant to IRC §7521." *Petitioner's Request for a Collection Due Process Hearing, Form 12153, dated Oct. 11, 2005, center of page.*

While all of petitioner's issues are based on law and star decisis, some of his issues are even approved by statute:

IRC § 6330 (c)(2)(A)

(ii) challenges to the appropriateness of collection action; and

(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer in compromise."

The IRS' Appeals Office ignores the affirmative statutes and declares the issues frivolous:

> "The items that you mention in your CDP (Collection Due Process Hearing) request are items that: 1. Courts have determined are frivolous (!) or groundless or 2. (IRS') Appeals (Office) does not consider. These are moral, religious, political, constitutional, conscientious, or similar grounds." Respondent's *response, to*

petitioner's request for hearing, by IRS' Appeals Office dated February 3, 2006, page 1, center of page.

Petitioner provides the IRS' Appeals Office the opportunity to support their claim that standard issues are frivolous:

> "In your letter dated Feb. 3. 2006, you (IRS' Appeals Office) stated that the items listed on my CDPH request are frivolous. At the CDPH (Collection Due Process Hearing), I will ask you to show me your derivation of that conclusion". Petitioner's l*etter to IRS' Appeals Office, April 3, 2006, page 1, near bottom.*

In the same letter, petitioner expands on one of his issues by asking for assistance:

> "At the CDPH (hearing) you will be asked to show me how I can make an OIC (Offer In Compromise) in view of the inconsistent positions the IRS has been communicating to me." *Letter to IRS' Appeals Office, April 3, 2006, page 1, below center.*

The statutes provide for issues to be raised at the hearing:

> "In general. The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including * * * *IRC § 6330 (c.)(2)(A)*

In compliance with that statute, petitioner offers to provide at the hearing, a list of issues for efficient resolution:

> "Prompted by Rule 1 of FRCP for a just, speedy and inexpensive procedure, petitioner will prepare a list of non-frivolous items that are of material interest, such that they can be efficiently considered at the CDPH." Petitioner's l*etter to IRS' Appeals Office of Feb.16, 2006, page 1, center.*

The IRS' Appeals Office does not respond to those issues.

Respondent's attorney for the United States Court of Appeal expands the range of the claim "frivolous". He starts by repeating the prior claim of "absence of non-frivolous issues":

> "The (IRS') Appeals Officer responded that taxpayer had failed to designate any non-frivolous issues." *Informal brief for the appellee, United States Court of Appeals for the Fourth Circuit No. 08-2290, Dec. 22, 2008, page 5, third line.*

Then respondent's attorney makes the all-inclusive claim that any issue petitioner would bring up at a hearing would be frivolous:

> "* * * the instant taxpayer, who seeks to raise only frivolous arguments will not be granted a face-to-face (statutory) hearing." *Informal brief for the appellee, United States Court of Appeals for the Fourth Circuit No. 08-2290, Dec. 22, 2008, page 5, second line.*

Respondent's elimination of issues is material since Tax Court's authority for summary judgment rests

on petitioner's alleged failure to raise issues at a non-existent hearing:

> "Petitioner has raised no genuine issue as to any material fact. Accordingly, we conclude that this case is ripe for summary judgment." Crag v. Commissioner *119 TC 252 at 260 above center.(2002)*

Respondent's eliminating of issues is abuse of discretion:

> " • • abuse of discretion standard, • • • Commissioner's determination is arbitrary, capricious, clearly unlawful, or without sound basis in fact or law." *Ewing v. Commissioner 122 TC 32 at 39 below center (2004)*

Thus, respondent unlawfully eliminates all issues either by ignoring them or by declaring them frivolous.

b. IRS OFFERS SUBSTITUTE HEARING

Having manufactured petitioner's standard and statutory issues, into frivolous ones, the IRS' Appeals Office refuses to resolve those "frivolous" issues, by denying a statutory Collection Due Process Hearing:

> (IRS') "Appeals (Office) does not provide a face-to-face (statutory) conference if the only items you wish to discuss are those (frivolous issues) mentioned above." Respondent's r*esponse, to petitioner's request for hearing, by IRS' Appeals*

Office dated February 3, 2006, page 1, near bottom.

The Tax Court, like the IRS' Appeals Office, denies petitioner a statutory hearing:

> "There is no dispute that petitioner requested and was denied a face-to-face hearings. It is equally clear that, under the circumstances, petitioner was not entitled to a face-to-face hearing. * * * A CDP (Collection Due Process) hearing may, but is not required to, consist of a face-to-face hearing * * * .' Sec. 301.6330-1 (d)(2)" *Tax Court docket 9348-06L, Order and Decision, entered Sept. 10, 2008, page 2 above center.*

The Tax Court advanced the above conditional, not applicable, regulation despite Petitioner's prior presentation of cogent and affirmative rulings, like:

> "Petitioner asked for a face-to-face CDPH. The Chief Judge of the US Tax Court ruled in Shell v. CIR, docket # 20188-05L on May 31, 2006 that IRC 6330 requires an in person hearing in CDPH cases if petitioner requests such." *US Tax Court Docket #9348 Petitioner's Opposition to Respondent's Motion for Summary Judgment, June 16, 2008, page 3 center.*

> "Petitioner asked that the CDPH be tape recorded. The Tax Court ruled, that all tape recorded CDPH must be in person. Dominic Calafati v. CIR, Dec. 2006, Docket N 17529_03L" *US Tax Court Docket #9348 Petitioner's Opposition to Respondent's Motion for Summary Judgment, June 16, 2008, page 3 center.*

> "Common sense also dictates that a show and tell exchange be conducted in person." *US Tax Court Docket #9348 Petitioner's Opposition to Respondent's Motion for Summary Judgment, June 16, 2008, page 3 center.*

> "Hearing: a proceeding of relative formality at which evidence and arguments may be presented· · · Merriam-Webster's Dictionary of Law 1996." *US Tax Court Docket #9348 Petitioner's Opposition to Respondent's Motion for Summary Judgment, June 16, 2008, H, page 2, top.*

For the U.S. Court of Appeals, appellant again provides multiple arguments for a statutory, meaning face-to-face, hearing. One of those arguments shows that appellant's consent is required for a substitute hearing:

> "Conferences by other means, such as telephone or correspondence are also acceptable provided the taxpayer consented to this procedure. Konkel v. Commissioner, 86 AFTR 2d 5545 (M.D. Fla. 2000)." *Informal brief for the appellant, Dec. 3, 2008, page 11 below center.*

Petitioner did not consent to a substitute hearing since in his experience nothing gets resolved by correspondence.

c. IRS DECLARES THAT IT PROVIDED A HEARING

Yet another "argument" used by the respondents is that, petitioner was given a substitute "hearing":

> "Petitioner was not denied an administrative hearing. The hearing consisted of ' written or oral communications • • • or some combination thereof ' between petitioner and the settlement officer." *Tax Court docket 9348-06L, Order and Decision, entered Sept. 10, 2008, page 2 at bottom, note 3.*

There, the Tax Court claims that a hearing took place, but does not specify the kind of "hearing".

Petitioner did not accept a telephonic hearing, nor was there a telephonic contact between petitioner and the settlement officer as the IRS' Appeals Office correctly states:

> "As of this date, you have neither attended a telephone(ic) hearing • • •" *Notice Of Determination, April 18, 2006, page 6, below center.*

There could not have been a substitute "hearing" by correspondence either; since nothing is resolved. Further, star decisis requires not just a hearing, but a meaningful hearing:

> "A fundamental requirement of due process is 'the opportunity to be heard.' Grannies v. Ordean, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. *U.S. Supreme Court,*

Armstrong v. Manzo, 380 U.S., 545. 552 top (1965)

The Statute requires a "fair" hearing:

IRC § 6320 (b) is titled "Right to fair hearing"

Had a meaningful and / or fair hearing been conducted, it would have resulted in a well prepared offer in compromise, would have provided reasons for labeling standard issues as frivolous etc. In short, there was no hearing.

d. IRS DENIES HEARING BY IGNORING ISSUES

The IRS' Appeals Office refuses to provide statutory hearings on issues it had labeled "frivolous" and on issues that it simply ignored:

> **(IRS') "Appeals (Office) does not provide a face-to-face (statutory) conference** if the only items you wish to discuss are those (frivolous issues) mentioned above." Respondent's r*esponse, to petitioner's request for hearing, by IRS' Appeals Office dated February 3, 2006, page 1, near bottom.*

The Tax Court justifies the denial of a statutory hearing based on "circumstances".

> "There is no dispute that petitioner requested and was denied a face-to-face hearings. It is equally clear that, under the circumstances, petitioner was **not entitled to a face-to-face hearing.** • • • ' Sec. 301.6330-1 (d)(2)" *Tax Court*

> *docket 9348-06L, Order and Decision, entered Sept. 10, 2008, page 2 above center.*

The circumstances must refer to the so called frivolous issues:

> "The (IRS') Appeals Officer responded that taxpayer had **failed to designate any non-frivolous issues.**" *Informal brief for the appellee, United States Court of Appeals for the Fourth Circuit No. 08-2290, Dec. 22, 2008, page 5, third line.*

Issues are to be raised at the hearing:

> "In general. The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including * * * *IRC § 6330 (c.)(2)(A)*

In compliance with that statute petitioner reminded the IRS' Appeals Officer of his intent to bring to the hearing a list of issues to be resolved:

> "Prompted by Rule 1 of FRCP for a just, speedy and inexpensive procedure, petitioner will prepare a list of non-frivolous items that are of material interest, such that they can be efficiently considered at the CDPH." *Petitioner's letter to IRS' Appeals Office of Feb.16, 2006, page 1, center.*

The IRS' Appeals Office denies a hearing, acts ex parte and therefore does not have petitioner's detailed list of issues, nor does it consider any of petitioner's issues.

e. TAX COURT IGNORES MOTION FOR REMAND

The Tax Court must generally distinguish two kinds of issues.

The first kind of issue is failure to provide a Statutory Collection Due Process Hearing. Since Statute IRC § 6320 (b) (1) mandates such a hearing, the only lawful response is remand to the IRS' Appeals Office:

> "If a person requests a hearing under subsection (a)(3)(B), such a hearing shall be held by the Internal Revenue Service Office of Appeals." *IRC § 6320 (b)(1)*

Petitioner made a Motion for Remand knowing that Tax Court authority, the facts, law and star decisis justify that action. However, the Tax Court ignored the Motion:

> "Motion for Remand to IRS' Appeals Office. Petitioner requests that the Tax Court remands this case to the IRS' Appeals Office for a face to face CDPH. At that hearing, the issues can be resolved, or ripened into actionable controversies." *Motion for Remand to IRS' Appeals Office. Tax Court, Washington DC, docket # 9348-06L June 16, 2008.*

Heretofore, Tax Courts have been remanding cases that share the facts with the instant case. One such case is shown here:

> "As a preliminary matter, it appears to the Court that (IRS') Appeals Officer Keeley acted

prematurely in labeling as frivolous and groundless the issues raised in petitioner's hearing request."

"ORDERED that this case is remanded to respondent's Appeals Office for the purpose of affording petitioner a face-to-face administrative hearing pursuant to section 56330 (IRC § 6330) for the purpose of discussing any valid issue • • • that petitioner may present." *Thomas Wane Marett v. CIR, Order by Washington DC Tax Court Docket No. 4048-061, July 7, 2006, page 4, near top and near bottom of page.*

The second type of issues are those that the person may raise at the hearing:

"In general. The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including ---" *IRC § 6330 (c)(2)(A)*

The Tax Court jurisdiction to review the second type of issues rests on two elements: Issues raised at the hearing and a Determination based on those issues,

"The Determination by an (IRS') Appeals Officer shall take into consideration··· (B) the issues raised __" *IRC § 6330 (c) (3)*

"The person may, within 30 days of a determination under this section, appeal such determination ··· (A) to the Tax Court (and the

> Tax Court shall have jurisdiction with respect to such matter); or" *IRC § 6330 (d) (1)*

In compliance to those statutes, Tax Courts limit review to issues raised at the IRS' Appeals Office hearing:

> ", generally we consider only arguments, issues, and other matter hat were raised at the collection hearing. . . . " *Magana v. Commissioner 118 TC 488 at 488 near bottom (2002)*

Petitioner's Motion for Remand should not only have been responded to, but also granted.

f. TAX COURT RESORTS TO SUMMARY JUDGMENT

As explained at e. supra, the Tax Court does not have jurisdiction over the second type of issues until they are raised at a hearing. However, based on the claimed absence of non-frivolous issues, the Tax Court feigns authority to render a summary judgment:

> "Resolution by summary judgment is appropriate if the pleadings, answers to interrogatories, depositions, admissions, and other acceptable materials, together with affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. Rule 121; Sunstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd. 17

> F. 3d 965 (7th Cir. 1994)" *Tax Court's Order and Decision, Sept. 10, 2008, first page, below center.*

By claiming absence of non-frivolous issues (even issues that have yet to be raised at a hearing !) the Tax Court ignores requirements set forth by Sunstrand, the authority it claims to rely on:

> "The moving party, however, bears the burden of proving that no genuine issue exists • • ." *Sunstrand Corp. v. Commissioner 98 US 518, 520, center.*

Further, the Tax Court ignores stare decisis. In prior cases the Tax Court refused to execute a summary judgment hat would have been based on standard issues that were labeled "frivolous":

> " Summary judgment under Rule 121 is appropriate when there is no genuine issue * *. "" * * , we conclude that petitioner did not raise only frivolous arguments. Petitioners raised issues properly within the scope of a CDP hearing, such as collection alternatives and spousal defense."
>
> "ORDERED that respondent's Motion for Summary Judgment, * * , is denied * *. "
>
> "ORDERED that respondent shall offer petitioners an administrative hearing at respondent's Appeals Office located closest to petitioners' residence * * "
>
> *John C. & Trudy Shell v. CIR, Washington DC, docket 20188-05L, Decision by Chief Special*

> *Trial Judge, May 31, 2006, page 3 top, page 4 near bottom and page 5 above center and at center.*

The IRS' Appeals Office also failed to ripen issues into an actionable controversy. Authority to execute a summary judgment rests in part on the presence of a ripened controversy:

> "The injunctive and declaratory judgment remedies are discretionary, and courts traditionally have been reluctant to apply them to administrative determinations unless these arise in the context of a controversy "ripe" for judicial resolution. *Abbot Laboratories ET AL. v. Gardner, Secretary of Health, Education and Welfare, ET AL. 387 U.S.136, 148 below center (1967).*

Despite failing both, the "absence of issues test" and the "ripeness test", the Tax Court renders a summary judgment "in accordance with the law", but actually, by denying the statutorily mandated hearing before starting collection, the Tax Court acts against the law (IRC 6320):

> "Ordered and Decided that respondent may proceed with collection as set forth in the Notice of Determination. (April 18, 2006)" *Order and Decision by Tax Court at Washington, D.C., docket No. 9348-06L, Sept. 10, 2008, page 3, top.*

Thus, the evidence convicts the IRS and the Tax Court of a having made a determined effort to deny petitioner a statutory collection due process hearing. Those actions also violate IRS' mission statement:

> "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all." *1040 Forms and Instructions, 2008, page 2, bottom.*

g. FEDERAL APPEALS COURT CONCURS

Respondent's attorney for the Appellate Court feigned appropriateness of a summary judgment by claiming that any issue petitioner would bring up at a hearing would be frivolous:

> "• • • the instant taxpayer, who seeks to raise only frivolous arguments • • •." *Informal brief for the appellee, United States Court of Appeals for the Fourth Circuit No. 08-2290, Dec. 22, 2008, page 5, second line.*

Petitioner denied all such allegations:

> "Appellant rejects all extraneous matter contained in Appellee's Brief. Appellant structures his response to Appellee's pertinent points by the issues on review." *Appellant's Informal Response to Informal Brief for Appellee. Dec. 31, 2008, page 2, top.*

In the same brief, appellant also highlighted his prior assertions in support of vacating the Tax Court's summary judgment:

> "The U.S. Tax Court violated due process law by issuing a Summary Judgment that is based on erroneous assumptions:

- statutory hearing is optional
- presence of a ripened controversy
- absence of material issues
- due process is optional"

Appellant's Informal Response to Informal Brief for Appellee. Dec. 31, 2008, page 2, center

C FEDERAL JURISDICTION IN TAX COURT

The court of original instance, the U.S. Tax Court at Washington, DC, had jurisdiction under IRC § 6320.

REASONS FOR GRANTING THE WRIT

Petitioner provides five reasons for granting the writ:

I This is a first impression case;
Heretofore, the Tax Court adhered to law.

II This issue is of extreme public importance
- A Avoid implosion of tax system
- B Safeguard judiciary's integrity
- C Support for sound national economy

III Ruling conflicts with the Constitution

IV Courts drastically departed from the usual course of judicial proceedings

V Supreme Court action is the only remedy

I. THIS IS A FIRST IMPRESSION CASE
Heretofore, the Tax Court adhered to law.

The Fifth Amendment to the United States Constitution demands due process. "No person shall be ... deprived of... property, without **due process of law...**" Congress particularized due process at IRC § 6320 that orders the IRS' Appeals Office to **provide petitioner a Collection Due Process Hearing.**

On some prior occasions IRS' Appeals Office also posited that there are no non-frivolous issues to be resolved and on that ground denied a hearing. The Tax Court in one case ruled that action "abuse of discretion" and corrected the error by remanding the case. Two other examples follow:

> "As a preliminary matter, it appears to the Court that (IRS') Appeals Officer Keeley acted prematurely in labeling as frivolous and groundless the issues raised in petitioner's hearing request."
>
> "ORDERED that this case is remanded to respondent's Appeals Office for the purpose of affording petitioner a face-to-face administrative hearing pursuant to section 56330 (IRC § 6330) for the purpose of discussing any valid issue * * * that petitioner may present." *Thomas Wane Marett v. CIR, Order by Washington DC Tax Court Docket No. 4048-061, July 7, 2006, page 4, near top and near bottom of page.*
>
> " * * , we conclude that petitioner did not raise only frivolous arguments. Petitioners raised

> issues properly within the scope of a CDP hearing, such as collection alternatives and spousal defense."
>
> "ORDERED that respondent's Motion for Summary Judgment, * * , is denied * *. "
>
> "ORDERED that respondent shall offer petitioners an administrative hearing at respondent's Appeals Office located closest to petitioners' residence * * "
>
> *John C. & Trudy Shell v. CIR, Washington DC, docket 20188-05L, Decision by Chief Special Trial Judge, May 31, 2006, page 4 near bottom and page 5 above center and at center.*

In petitioner's case, the lower courts did not correct IRS' Appeals Office's erroneous presumption of absence of issues, but did a "new thing", namely, the courts confirmed the denial of a hearing. That "new thing", the **denial of a statutory hearing, becomes this "first impression issue"** for the Supreme Court.

II ISSUE IS OF EXTREME PUBLIC IMPORTANCE

Petitioner presents three arguments to show the public importance of a Supreme Court ruling that affirms the requirement of statutory hearings:

A Avoid tax system implosion

B Safeguard judiciary's integrity

C Support sound national economy

A AVOID TAX SYSTEM IMPLOSION

In the United States, tax collection is all-important for amelioration of inflation.

> "*** the value of all the dollars that our trading partners hold is falling (inflation), meaning that the buying power of their dollar reserves are in decline, as well. That's a problem for many reasons, not the least of which is that their stronger currencies allow them to buy U.S. assets at bargain-basement prices. Indeed, it is already happening, as we see from all the foreign takeovers of U.S. companies, and from Dubai's recent buyout of New York's Chrysler Building. *Inside Wall Street: The Real Reason The Federal Reserve Can't Raise Interest Rates by Shah Gilani, Editor, Trigger Event Strategist, Contributing Editor, Monday Morning, Page 3 bottom..http//triggereventstrategist.com/archives /federal reserve.*
>
> "The tax is a logical method of inflation control**" *Roy Blough, Director, The Individual Income Tax as a Method of Inflation Control, 7 February 1944, Summary; Located in Box 52; Individual Income Tax Payers; Records of the Office of Tax Analysis/Division of Tax Research; General Records of the Department of the Treasury, record Group 56; National Archives, College Park, MD.*

Tax collection requires public support and the public will not support capricious taxing procedures:

> "The 1775 Revolution was largely a revolt against growing arbitrary power." *Lost Rights, The Destruction of American Liberty, by James Bovard. ISBN: 0-312-12333-7. http://www.jimbovard.com*

The IRS implicitly agrees hat public support is important. The IRS curries public support by crafting their mission statement carefully:

> "• • applying the tax law with integrity and fairness to all." *1040 Forms and Instructions 2008, IRS Mission, page 2, bottom.*

However, IRS' denial of a statutory hearing cannot possibly contribute to the public's perception of fairness in tax collection. The disconnect of IRS' mission and action, lies partially in lack of ability. Two examples follow:

> "The Tax Court's finding that the IRS was excused because its own regulations were to 'complex' was an abuse of discretion." *U.S. Court of Appeals of the Ninth Circuit, Robert C. McKee; et al. v. CIR,* No. 04-74846, *filed December 4, 2006, page 2, center.*

> Commissioner's "argument is frivolous•••" *Tenth Circuit, Lindsey K. Springer v. CIR, No. 08-9004, filed August 31, 2009, page 9, bottom.*

To gain the all important public support for the tax collection system, the Supreme Court needs to rule that **the statutorily required hearing is not to be denied.**

B SAFEGUARD JUDICIARY's INTEGRITY

Knowing the limitations of IRS' understanding of its own regulations, as well as its missing acumen for law, the courts may not appear to be obsequious to IRS' demeanor. A viable judiciary rests on the all important public perception of justice provided. Therefore, the Supreme Court needs to rule that **the statutorily required hearing is not to be denied.**

C SUPPORT SOUND NATIONAL ECONOMY

A judiciary that condones unlawful actions invites fears over an uncertain economic future and that encourages capital flight:

> Mr. Armstrong comments on the fall of the Roman Empire and concludes that, similar, to the U.S., "the rule of law collapses and the self–interest of the state dominates, capital cannot long survive. It flees." *Martin Armstrong Letter, former chairman of Princeton Economics Int'l, Ltd., letter of March 23, 2009, page 4-5. http://totallygroovygirlfriday.worldpress.com*

A sound economy is predicated on a sound judicial system, therefore, **the statutorily required hearing is not to be denied.**

III RULING CONFLICTS WITH CONSTITUTION

The United States Court of Appeal for the Fourth Circuit has sanctioned a Tax Court's decision that violates Statutes and negates part of the United States Constitution:

> "It cannot be presumed, that any clause in the Constitution is intended to be without effect." *Chief Justice Marshall in Marbury v. Madison. 5 U.S. 139, at end of 174 (Cranch I)(1803).*

The Fifth Amendment to the United States Constitution demands due process. "No person shall be ... deprived of... property, without **due process of law...**". Congress particularized due process at IRC § 6330 that orders the IRS' Appeals Office to provide a Collection Due Process Hearing. However, **conflicting with the U.S. Statutes and the U.S. Constitution, the IRS' Appeals Office denied a hearing.**

IV. COURTS DRASTICALLY DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS

The United States Court of Appeal for the Fourth Circuit sanctioned the Tax Court's judicial procedure that has far departed from accepted and usual course of judicial proceedings.

Heretofore, the Tax Courts remanded cases that were based on IRS' Appeals Office labeling as "frivolous" Congressionally approved issues. The

erroneous "frivolous" label could then be removed and the issues resolved or ripened into actionable controversies. One example follows:

> " * * , we conclude that petitioner did not raise only frivolous arguments. Petitioners raised issues properly within the scope of a CDP hearing, such as collection alternatives and spousal defense."
>
> "ORDERED that respondent's Motion for Summary Judgment, * * , is denied * *. "
>
> "ORDERED that respondent shall offer petitioners an administrative hearing at respondent's Appeals Office located closest to petitioners' residence * * "
>
> *John C. & Trudy Shell v. CIR, Washington DC, docket 20188-05L, Decision by Chief Special Trial Judge, May 31, 2006, page 4 near bottom and page 5 above center and at center.*

In the instant case, the Tax Court upheld the IRS' Office of Appeal's posit, that congressionally approved issues are frivolous:.

> " • • there is no genuine issue • • " *Tax Court docket 9348-06L, Order and Decision, Sept. 10, 2008, page 1, below center:*

The Tax Court drastically departed from the usual course of judicial proceedings by denying a hearing and is thereby compelling the Supreme Court to exercise its supervisory power. *For the under color of law scheme used, see "B. Statement of the Case".*

V. SUPREME COURT ACTION IS THE ONLY REMEDY

The IRS' Appeals Office erroneously denied petitioner a statutory Collection Due Process Hearing. The Tax Court affirmed. The Appellate Court affirmed as well, probably due to the mountain of misleading papers it was handed. Nevertheless, it failed to uphold the law:

> " • • federal courts, have a duty to protect rights secured by the Constitution". *Jennison v. Goldsmith 940F 2d 1308, 1311 top right (9th Cir. 1991)*

CONCLUSION

When the IRS' Appeals Office fails to provide hearing, the Tax Court must retain its current practice to remand the case to IRS' Appeals Office for a Statutorily mandated Collection Due Process Hearing. The Tax Court has no authority over collection related issues prior to a Statutory hearing held by IRS' Appeals Office, nor can the Tax Court foresee whether proper issues will be presented at a yet future hearing.

The IRS' Appeals Office must continue to provide Statutory Collection Due Process Hearings and may not start to deny such a hearing predicated on subterfuges like the ones it employed in the instant case:

- Claiming Statutory collection related issues to be frivolous, is itself frivolous.
- Claiming absence of issues before a hearing is held is frivolous since by Statute, collection related issues are to be raised at the hearing.
- Claiming that a substitute hearing was held, to which petitioner did not consent, is not authorized by Statutes or Regulations.
- Implying that a statutory hearing would delay collection is not factual, since at a hearing issues can be resolved efficiently.
- Implying that IRS' Appeals Office is able to make valid ex-parte determinations is not realistic. Everyone, even IRS' Appeals Office, needs adversarial proceedings to devise just outcomes.
- Implying that the courts are best suited to resolve collection issues is irrelevant since the Statute requires IRS' Appeal Office to provide a hearing for that purpose. It is also counterproductive since the courts are overburdened even without the extra workload.

A Supreme Court ruling is urgently needed. If Courts were to drop their insistence on the granting of Statutory hearings, confidence in the taxing system, and the judiciary, could drop to the danger point, Certainly, the emotions of the masses need not to be stirred

Plaintiff urges this most Honorable Court to exercise its supervisory authority and grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

Dated: Nov. 23, 2009

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APPENDIX A

Filed: Sept. 9, 2009

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 082290

(06-9348)

CHRISTIAN K. SCHNEIDER,

Petitioner – Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent – Appellee

MANDATE

The judgment of this Court, entered 6/2/09, takes effect today.

This constitutes the formal mandate of this Court issued pursuant to Rule 41 (a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Conner, Clerk

APPENDIX B

FILED : September 1, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2290

(06-9348)

CHRISTIAN K. SCHNEIDER,

Petitioner – Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent – Appellee

ORDER

The Court denies the petition for rehearing en banc . No judge requested a poll under Fed. R. App. P.35 on the petition for rehearing en banc.

Entered at the direction of the panel : Judge Wilkinson, Judge King, and Judge Gregory.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX C

FILED : June 2, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2290

CHRISTIAN K. SCHNEIDER,

Petitioner – Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent – Appellee

JUDGMENT

In accordance with the order of this Court, the judgment of the Tax Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ Patricia S. Connor, Clerk

APPENDIX D Page 1

UNITED STATES TAX COURT
WASHINTON, D.C. 20217

CHRISTIAN K. SCHNEIDER,)
Petitioner)
v.)
) Docket No.9348-6L
COMMISSIONER OF)
INTERNAL REVENUE)
Respondent)

ORDER AND DECISION

This section 6330 (d)[1] case is before this Court on respondent's Motion for summary judgment, filed June 5, 2008. Petitioner's objection to respondent's motion was filed on June 23, 2008.

In a Notice of Determination Concerning Collection Action(s) Under Section 6320 and / or 6330, dated April 18, 2006, respondent determined that the filing of a Notice of Federal Tax Lien was an appropriate collection activity with respect to petitioner's outstanding 1997, 1998, 1999, and 2000Federal income tax liabilities. In a timely petition, petitioner challenges that determination.

Resolution by summary judgment is appropriate if the pleadings, answer to interrogatories, depositions, admissions, and other

APPENDIX D Page 1, continued

acceptable materials, together with affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may by rendered as a matter of law. Rule 121; Sunstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd. 17 F. 3d 965 (7th Cir. (1994).

Ignoring the meaningless portions of petitioner's objection to respondent's motion leaves only his claim that respondent's motion must be denied because there is a genuine issue as to a material fact in dispute in this case. According to petitioner,

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[1] Unless otherwise noted, section references are to the Internal Revenue Code of1986, as amended.

APPENDIX D Page 2

the question of whether respondents determination is an abuse of discretion[2] is a question of fact. According to petitioner, because respondent refused to allow a face-to-face hearing before the issuance of the above-referenced notice of determination, the determination made in that notice is, in fact, an abuse of discretion.

There is no dispute that petitioner requested and was denied a face-to-face hearing,[3] It is equally clear that, under the circumstances, petitioner was not entitled to a face-to-face hearing. The applicable

regulations specifically state that an administrative hearing conducted pursuant to section 6330is "informal in nature and do (es) not require * * * a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face hearing * * *," Sec. 301. 6330-1 (d) (2)Q&A-D6, Proced.. & Admin. Reg. Because petitioner was not entitled to a face-to-face hearing, respondent's denial of such a hearing is hardly an abuse of discretion.

No other factual disputes between the parties are evident from their submissions. Furthermore, respondent's motion establishes that in all other respects the provisions of section 6330 have been satisfied, and nothing submitted by petitioner suggests otherwise. For the foregoing reasons, as well as for the reasons set forth in respondent's motion, it is

ORDERED that respondent's Motion for Summary Judgment, filed June 5, 2008, is granted. It is further

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[2] Because petitioner is here precluded from challenging the existence or the amounts of the underlying liabilities for the years at issue, see sec. 6330 (c) (2) (B), we review respondent's determination for abuse of discretion. Goza v. Commissioner, 114 T.C. 176 (2000).

[3] Petitioner was not denied an administrative hearing. The hearing consisted of "written or oral communications * * * or some combination thereof" between petitioner and the settlement officer.

APPENDIX D Page 3

ORDERED and DECIDED that respondent may proceed with collection as set forth in the Notice of Determination Concerning Collection Action (s) Under Section 6320 and/or 6330, dated April 18, 2006.

Signed Lewis R. Carluzzo
Lewis R. Carluzzo
Special Trial Judge

Entered: SEP 10 2008